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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/385,414	08/30/1999	JAMES B. POAGE	7099.1186	9114

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EXAMINER

COLON, CATHERINE M

ART UNIT	PAPER NUMBER
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2163

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DATE MAILED: 01/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

A.G.

Office Action Summary

Application No.

09/385,414

Applicant(s)

POAGE ET AL.

Examiner

C. Michelle Colon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 August 1999 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. The following is a Final Office Action in response to the communication received on September 11, 2001. Claims 1, 10, 18, 21 and 24 have been amended. Claims 1 – 24 are now pending in this application.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. Claims 1 – 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Day et al. (U.S. 5,857,175).

(Amended) Claim 1 is anticipated where Day et al. disclose a supervisory computer used to perform special offer maintenance such as determining targeting parameters including a time period (col. 3, lines 39 – 42 and 57 – 67, col. 7, lines 13 – 26), associating certain customer criteria with certain offers (col. 4, lines 1 – 9; Day et al. disclose, for example, varying the amount of a discount (offer parameter) depending on the quantity of a category of product a customer purchases (customer selection criteria)); determining a likelihood that the new initiative will be effective using stored statistics reflecting hit rates of past initiatives with past sales requests (col. 8, lines 9 –

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17; Day et al. disclose using reports to determine which initiatives were accepted (i.e., hit rate of the initiative) and with what amount of success (i.e., conversion of hit rates to actual sales requests) (col. 8, lines 16 – 17)); and providing a result indicating the effectiveness of the new initiative (col. 8, lines 16 – 17 and 37 – 42; If a business has a means to measure the effectiveness of its marketing initiatives, it would make complete business sense for the business to utilize those analyses to refine current and new marketing initiatives. Day et al. disclose using statistical analyses to target customers because doing so increases the likelihood that customers will accept the marketing initiatives).

Claims 2 and 4 are anticipated where Day et al. disclose a database for storing customer account information including purchase history, and a database for storing special offers to be made to selected customers based on targeted offer targeting parameters (col. 3, lines 23 – 28).

Claim 3 is anticipated where Day et al. disclose a method for determining when an offer is expired and when it should become effective (Figures 2 and 3).

Claim 5 is anticipated where Day et al. disclose a possibility for excluding certain special offers from broadcast if it is determined that other offers will be more valuable to certain customers (col. 6, lines 1 – 12).

Claim 6 and 7 are anticipated where Day et al. disclose a method for determining what action should be taken on an offer based on the offer status (col. 9, lines 1 – 26). The method takes into account offers that are to be put into effect immediately as well as those that are to be stored in the offers database for later use (Figures 1 – 3 and 5).

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Since the offers are based on time periods and have expiration dates, it is inherent that the offers database would be applied to the system on a periodic basis.

Claims 8 and 9 are anticipated where Day et al. disclose a method that includes receiving a sales request at check-out, associating a purchased product with a customer account, and determining whether a special offer is available for that product (col. 6, lines 19 – 33). The check-out system then applies any special offers to the customer's total if a purchased product has a corresponding special offer. After a transaction is completed, the system tracks the purchase history of the customer, including whether or not the customer accepted a special offer (col. 14, lines 52 – 58).

(Amended) Claim 10 is anticipated where Day et al. disclose computers used to assist in data storage, analysis, and targeted marketing (col. 3, lines 47 – 67).

Administrators use the computers to determine targeting parameters and associate customers who meet certain criteria with certain offers. The computers are also used to generate reports of the effectiveness of special offers in causing customers to purchase products and to maintain and update promotional activity statistics based on special offers made and accepted (col. 8, lines 9 – 17 and lines 37 – 42).

Claims 11 and 12 are anticipated where Day et al. disclose that each computer includes a database of special offers including customized targeted offers to be made to certain customers based on the targeting parameters (col. 3, lines 23 – 28).

Claim 13 is anticipated where Day et al. disclose a possibility for excluding certain special offers or changing the quantity of certain special offers from being shown

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if it is determined that other offers will be more valuable (provide a greater discount) to certain customers (col. 6, lines 1 – 12).

Claims 14 and 15 are anticipated where Day et al. disclose a method for determining what action should be taken on an offer based on the offer status (col. 9, lines 1 – 26). The method takes into account offers that are to be put into effect immediately as well as those that are to be stored in the offers database for future use (Figures 1 – 3 and 5). Since the offers are based on time periods and have expiration dates, it is inherent that the offers database would be applied to the system on a periodic basis.

Claim 16 is anticipated where Day et al. disclose a system for inserting special offers from the offers database into the (runtime) database where the offers will be put into effect for each qualifying customer (col. 10, lines 19 – 29). Once all offers are put into the (runtime) database, the offers are available for delivery to customers who meet the targeted offer criteria when a product purchased is identified at check-out as having a special offer (Figures 5 and 8).

Claim 17 is anticipated where Day et al. disclose a system that shows customers the most applicable special offers based on the customer criteria, the product, and the targeted offer parameters (col. 6, lines 22 – 33). Furthermore, the system maintains and communicates to each customer a running total of savings realized by that customer (col. 7, lines 7 – 12). The special offers are presented to customers at check-out or a store kiosk via a printed receipt. The only way to present to a customer a

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running total of savings is to keep track of the offers the customer accepts; therefore the special offers for each customer are tracked by the system.

(Amended) Claim 18 is anticipated where Day et al. disclose computers used to assist in data storage, analysis, and targeted marketing (col. 3, lines 47 – 67).

Administrators use the computers to determine targeting offer parameters and associate customers who meet certain criteria with certain offers. The computers are also used to generate reports of the effectiveness of special offers in causing customers to purchase products (col. 8, lines 9 – 17). Furthermore, Day et al. disclose that each computer includes a database of special offers including customized targeted offers to be shown to certain customers based on the targeting parameters (col. 3, lines 23 – 37). All the computers of the system are connected via a wide area network and therefore can communicate with one another. Day et al. also disclose a kiosk used to communicate special offers to customers who access the customer interface (col. 4, lines 59 – 64).

Claim 19 is anticipated where Day et al. disclose a system for inserting special offers from the offers database into the (runtime) database where the offers will be put into effect for each qualifying customer (col. 10, lines 19 – 29). Once all offers are put into the (runtime) database, the offers are available for delivery to customers who meet the targeted offer criteria when a product purchased is identified at check-out as having a special offer (Figures 5 and 8).

Claim 20 is anticipated where Day et al. disclose a system that shows customers the most applicable special offers based on the customer criteria, the product, and the targeted offer parameters (col. 6, lines 22 – 33). Furthermore, the system maintains

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and communicates to each customer a running total of savings realized by that customer (col. 7, lines 7 – 11). The special offers are presented to customers at check-out or a store kiosk via a printed receipt. The only way to present to a customer a running total of savings is to keep track of the offers the customer accepts, therefore the special offers for each customer is tracked by the system.

(Amended) Claim 21 is anticipated where Day et al. disclose a supervisory computer used to perform special offer maintenance such as determining targeting parameters including a time period (col. 3, lines 39 – 42 and 57 – 67, col. 4, lines 1 – 9), associating certain customer criteria with certain offers, and using stored customer account information to determine which customers meet the criteria (col. 7, lines 13 – 26), determining a likelihood that each new initiative will be effective using stored statistics reflecting hit rates of past initiatives with past sales requests (col. 8, lines 9 – 17), and a method for updating promotional activity statistics based on special offers made and accepted (Figures 15 – 17).

Claim 22 is anticipated where Day et al. disclose a database for storing customer account information including purchase history, and a database for storing special offers to be made to selected customers based on targeted offer targeting parameters (col. 3, lines 23 – 28). Day et al. further disclose a transactional analysis that occurs at check-out (col. 14, lines 46 – 52). Based on the results of the transactional analysis, the manufacturer has the option to discontinue the offer to that particular customer, or to reinstate the offer and allow the customer to redeem the offer again. Accordingly,

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depending on the status of the offer (discontinued or reinstated), it remains in the database for future use, or is deleted from the database (Figures 12 – 14).

Claim 23 is anticipated where Day et al. disclose a possibility for excluding certain special offers from broadcast if it is determined that other offers will be more valuable (provide a greater discount) to certain customers (col. 6, lines 1 – 12).

(Amended) Claim 24 is reciting program instructions that perform the method recited in claim 1. Therefore, the analysis that was applied to claim 1 will be applied to claim 24. Day et al. disclose a supervisory computer used to perform special offer maintenance such as determining targeting parameters including a time period (col. 3, lines 39 – 42 and 57 – 67, col. 4, lines 1 – 9), associating certain customer criteria with certain offers, using stored customer account information to determine which customers meet the criteria (col. 7, lines 13 – 26), and determining a likelihood that each new initiative will be effective using stored statistics reflecting hit rates of past initiatives with past sales requests (col. 8, lines 9 – 17). Furthermore, it is inherent that a computer, used to perform a function, such as creating a marketing initiative, will have a memory with program instructions in order to function properly and be of any use.

Response to Amendments

4. Applicant's amendments to claims 1, 10, 18, 21 and 24 are insufficient to overcome the § 102 rejections set forth in the previous Office Action. Hence, the previous § 102 rejections are maintained.

Response to Arguments

5. Applicant's arguments with regard to the § 102 rejections based on Day et al. have been fully considered but are not persuasive. In the remarks, the Applicant argues that (1) Day et al. do not teach determining a likelihood that the new initiative will be effective using stored statistics reflecting hit rates of past initiatives with past sales requests; and (2) Day et al. are primarily concerned with whether a special offer causes customers to purchase products thereby increasing sales in contrast to the Applicant's invention whereby the primary concern is whether an initiative is being selected as relevant to sales requests.

In response to Applicant's argument that (1) Day et al. do not teach determining a likelihood that the new initiative will be effective using stored statistics reflecting **hit rates of past initiatives with past sales requests**, the Examiner respectfully disagrees and further asserts that Day et al. do disclose the limitation when they discuss using reports to determine which marketing initiatives were accepted (i.e., hit rate of the initiative) and with what amount of success (i.e., conversion of hit rates to actual sales requests)(col. 8, lines 16 – 17). The invention of Day et al. further discloses determining, after a transaction is made, whether a customer accepted a marketing initiative, passed on the marketing initiative, or rejected the marketing initiative (col. 14, lines 54 – 58). Furthermore, based on the results of the determination of the effectiveness of the marketing initiative, Day et al. disclose updating new marketing initiatives based on the results from analyses of past initiatives (col. 16, lines 60 – 64).

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In response to Applicant's argument that (2) Day et al. are primarily concerned with whether a special offer causes customers to purchase products thereby increasing sales in contrast to the Applicant's invention whereby the primary concern is whether an initiative is being selected as relevant to sales requests, the Examiner acknowledges that Day et al. is concerned with whether a marketing initiative is effective in increasing sales for the product category for which the marketing initiative is for. However, the Examiner respectfully disagrees that such concern differs from the Applicant's invention. By measuring and determining the effectiveness of a marketing initiative to cause a product sale for a particular category of product, Day et al. are in effect measuring the initiative with respect to the sales request for that product. In particular, Day et al. go so far as to consider an initiative **ineffective** even if a product was purchased because the purchase was not for the particular product the initiative was for (col. 14, lines 57 – 58).

Therefore, based on the reasons stated above, the Applicant's arguments are found not persuasive and the prior § 102 rejections for claims 1 – 24 from paper number five are maintained.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached at 703-305-9643.

The fax numbers for the organization where this application or proceeding is assigned are as follows:


703-746-7238 [After Final Communication]

703-746-7239 [Official Communications]

703-746-7240 [For status inquiries, draft communication]

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

CMC
January 16, 2002


TARIQ R. HAFIZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100



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